

REMARKS

The following remarks are in response to the Official Action mailed May 9, 2006.

In the Official Action, the Examiner objects to this disclosure as not properly claiming the relationship between the application and prior applications. In response to this, Applicants have amended the first paragraph of the present application to thereby correctly claim priority to prior applications. No new matter has been added to the application as a result of this amendment.

CLAIM REJECTION UNDER 35 U.S.C. §102 - Keller

Claims 1, 2, and 19 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,997,432 to Keller. Independent claims 1 and 19 both include recitations directed towards a manipulation tool having an angled distal end. The angled distal end of the manipulation tool corresponds to the angled perimeter of at least one of the base plates such that the movement of the base plate with the angled perimeter is limited by interference between the angled perimeter of the baseplate and the corresponding angled distal end of the manipulation tool. The angled distal end of the manipulation tool refers to the angled flat surfaces 420 A-C disposed on the end of the manipulation tool. These angled flat surfaces are discussed throughout the specification as for instance in paragraph [0087] of the present application. In addition, a lengthy discussion regarding these angled flat surfaces is included in paragraph [0140].

The Examiner asserts that Keller discloses a spinal device with first and second baseplates that include angled perimeters. Unfortunately, the Examiner is referring to the

slope of the baseplates relative to one another. This is clearly different than what is included within claims 1 and 19 of the present application wherein the angled perimeter of the baseplates refer to the side surfaces of the baseplates being angled to one another as for instance walls 120A, 120B and 120C.

The Examiner also asserts that the manipulation tool in *Keller* has an angled distal end with jaws being angled to correspond to the angled perimeter ends of the baseplates. Once again, the Examiner is referring to the articulation of the baseplates and jaws relative to one another as opposed to the angled distal end which includes angled walls defining the distal end. The claims of the present application must be read in light of the specification which clearly asserts that the angled perimeter and angled distal end of the manipulation tool is with regard to the angled surfaces disposed at the various perimeter and distal ends. Once this clarification is taken into account, it is clear that *Keller* only discloses a baseplate having a curved perimeter as well as a manipulation tool that only has jaws that include curved walls. As shown in FIG. 4 of *Keller*, the circular baseplate fits within the curved walls of the manipulation tool. This is contrasted to the present invention wherein the angled perimeter of the baseplates corresponds to the angled distal end of the manipulation tool. Thus, Applicants assert that claim 1 as well as claims 2 and 19 are in condition for allowance and should be deemed patentable.

CLAIM REJECTION UNDER 35 U.S.C. §103 - Keller in view of McGahan

Claims 3-18 and 20 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Keller* in view of WO 01/62191 to *McGahan, et al.* The Examiner acknowledges that *Keller* fails to disclose the baseplates having three flat perimeter surfaces with two of the perimeter surfaces forming corners. However,

the Examiner contends that *McGahan* does teach such a structure and further contends that it would have been obvious to combine the two references to render claims 3-18 and 20 unpatentable.

Claims 3-18 depend from claim 1 of the present application and thus include all of the recitations of claim 1. As discussed above, not only does claim 1 of the present application include a recitation directed towards the angled perimeters of the baseplate as well as the angled distal end of the manipulation tool, but also that the baseplates of the respective orthopedic device are articulatable relative to one another. *McGahan* is directed towards a manipulation tool for inserting a bone graft. The bone graft is a non-moveable single element having a plurality of screw holes extending therethrough. At no point does *McGahan* discuss that the bone graft may include a first portion which is articulatable to a second portion. Therefore, if one was to combine *McGahan* with *Keller* and incorporate all of the teachings of *McGahan*, one would be left with a device which is not articulatable relative to itself.

Further, not only does *McGahan* and *Keller* in combination not disclose all the claims of the present application, but also *McGahan* is limited to disclosing an inserter for engaging an implant that is made from a single structure that does not allow articulation. As opposed to *Keller*, which discloses an implant for attaching to two baseplates of a single implant that are only rested upon one another. If one were to use the inserter of *McGahan* with the implant of *Keller*, a portion of the implant of *Keller* would simply fall off the inserter of *McGahan* as the implant is being placed between two vertebrae. Thus, *Keller* and *McGahan* are not combinable nor has the Examiner shown any motivation for their combination, as required by the United States Patent and Trademark Office standards. Thus, Applicants assert that claims

1 are in condition for allowance and patentably distinct from the combination of *Keller* of *McGahan*.

Independent claim 20 includes similar recitations discussed with regard to independent claims 1 and 19. Further, independent claim 20 specifically states that the angled perimeter of at least one of the baseplates includes a plurality of flat surfaces adjacent one another. Thus, for reasons similar to those discussed with regards to independent claims 1 and 19 as well as those discussed with regard to dependent claims 3-18, claim 20 is also patently distinct from *Keller* and *McGahan* alone or in combination.

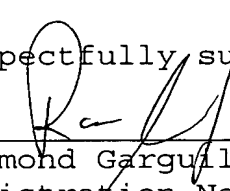
As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: August 9, 2006

Respectfully submitted,

By 
Raymond Garguilo, Jr.
Registration No.: 50,930
LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
600 South Avenue West
Westfield, New Jersey 07090
(908) 654-5000
Attorney for Applicant